

**FILED**  
UNITED STATES DISTRICT COURT  
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

FEB 24 2004

AUGUSTINE GRANO,

Plaintiff,

  
CLERK

vs.

Civ. No. 03-0340 WPJ/LCS

RON LYTLE, Warden, Central New Mexico  
Correctional Facility, et al.,

Defendants.

**MEMORANDUM, OPINION, AND ORDER ADOPTING MAGISTRATE JUDGE'S  
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION AND GRANTING  
DEFENDANT ADDUS' MOTION TO DISMISS**

**THIS MATTER** comes before the Court on the Magistrate Judge's Proposed Findings and Recommended Disposition ("PFD") filed December 22, 2003 (Doc. 26), and Defendants Baca, Murphy, and Lytle's Motion to Dismiss filed September 16, 2003 (Doc. 20). Neither Plaintiff nor Defendants have filed objections to the Magistrate's PFD. I adopt the Magistrate's PFD, with additional legal reasoning to follow. Defendants' Motion is **GRANTED**.

Since the PFD was filed, the Tenth Circuit decided *Issa v. Comp USA*. *Issa v. Comp USA*, 2003 U.S. App. LEXIS 26280 (10th Cir. Utah Dec. 24, 2003). In that case, the Court stated that "...even if a plaintiff does not file a response to a motion to dismiss for failure to state a claim, the district court must still examine the allegations in the plaintiff's complaint and determine whether the plaintiff has stated a claim upon which relief can be granted." *Id.* at \*6-7. However, the claim can also be dismissed on another, separate ground. The Court reiterated that the district court has the authority to sanction a party for failing to follow federal and local rules; however "a district court must perform an explicit analysis of the *Meade* factors before it dismisses a complaint as a sanction."

*Id.* at \* 7.

While the Magistrate Judge recommended granting the Motion on multiple grounds, it is my understanding that he placed the most emphasis on *Meade* and dismissal of the case as a sanction. Although the Magistrate Judge discussed the third *Meade* factor, “culpability of the litigant” in detail, in light of *Issa*, a more thorough examination of the first two *Meade* factors is necessary. *Meade v. Grubbs*, 841 F.2d 1512, 1521 (10th Circuit 1988). The first factor in the *Meade* analysis is “the degree of actual prejudice to the defendant.” *Id.* Plaintiff’s failure to respond in a timely fashion clearly prejudices Defendants. As more time goes by, memories fade and witnesses can be more difficult to locate, thus decreasing Defendants’ ability to adequately defend their case. The second *Meade* factor is “the amount of interference with judicial process.” *Id.* Plaintiff’s failure to file a Response to the Defendants’ Motion to Dismiss shows his lack of interest in litigating his claim and clearly impedes the Court’s ability to examine the case. Examining *Issa* and *Meade* in tandem, it is clear that Defendants’ Motion to Dismiss is well-taken.

After the PFD was filed, Defendant Addus Medical Healthcare, Inc. (“Addus”) filed a Motion to Dismiss requesting dismissal on the same grounds as Defendants Baca, Murphy and Lytle. (Doc. 27).

Defendant Addus’ Motion procedurally mirrors that of Defendants Baca, Murphy, and Lytle. Because Defendants raised issues in their answer that the Court construed as a Motion to Dismiss, the Court filed a Briefing Schedule Order, in which Defendants were to file a memorandum in support of their Motion to Dismiss with supporting memorandum on September 16, 2003. (Doc. 17). Defendant Addus filed its Motion to Dismiss with supporting memorandum on September 8, 2003. (Docs. 18-19). On November 10, 2003 Plaintiff filed a Motion for an Extension of Time to file a response to the Motion to Dismiss. (Doc. 22). On November 18, 2003, the Court granted Plaintiff’s

Motion and updated the Briefing Schedule, requiring Plaintiff to file a response brief to the Motion(s) to Dismiss by December 2, 2003 and for Defendants to file a reply brief by December 17, 2003. (Doc. 24). Plaintiff failed to file a response brief and as mentioned above, has not filed objections to the Magistrate's PFD with regard to Defendants Baca, Murphy, and Lytle. Because Addus' Motion mimics that of Defendants Baca, Murphy and Lytle, Defendant Addus' Motion is **GRANTED** on the same grounds as Defendants Baca, Murphy, and Lytle's Motion and follows the reasoning laid out above and in the PFD.

**WHEREFORE,**

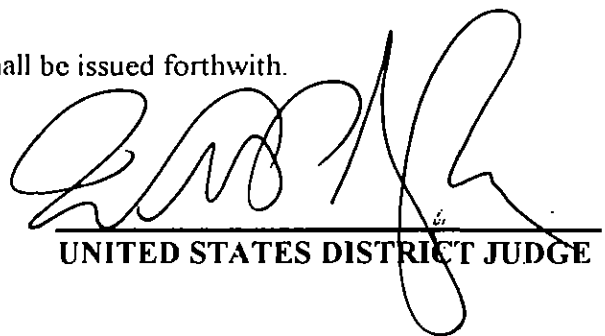
**IT IS HEREBY ORDERED** that the Magistrate Judge's Proposed Findings and Recommended Disposition filed December 22, 2003 (Doc.26) are adopted by the Court.

**IT IS FURTHER ORDERED** that Defendants Baca, Murphy, and Lytle's Motion to Dismiss filed September 16, 2003 (Doc. 20) is hereby **GRANTED**.

**IT IS FURTHER ORDERED** that Defendant Addus' Motion to Dismiss on the same grounds as Defendants Baca, Murphy, and Lytle's Motion filed December 30, 2003 (Doc. 27) is hereby **GRANTED**.

A judgment consistent with this Order shall be issued forthwith.

**IT IS SO ORDERED.**



UNITED STATES DISTRICT JUDGE